

App. No. 09/881,609  
Response B  
Page 2 of 8

### REMARKS

Reconsideration of the present application in view of the following remarks is respectfully requested. Claims 13-19 and 23-25 were previously been canceled without prejudice or disclaimer. Thus, fifteen (15) claims remain pending in the application: claims 1-12 and 20-22.

By way of this amendment, Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Thomas F. Lebens at (805) 781-2865 so that such issues may be resolved as expeditiously as possible.

### Claim Rejection under 35 U.S.C. §102

1. The office action has rejected claims 1-12 and 20-22 under as 35 U.S.C. §102(b) being anticipated by U.S. Patent No. 5,819,019 to Nelson. Applicant respectfully traverses these rejections. The Nelson patent fails to teach each limitation of at least independent claims 1, 10 and 20. More specifically, claim 1 for example recites in part:

a headend coupled to the transmission channel, said headend including a video server than can transmit one or more VOD sessions to one or more receivers, and a control server coupled to the video server, the control server ... to cause the video server to transmit one or more dummy sessions over the transport stream to maintain a predetermined minimum bandwidth of content over the transport stream. (Emphasis added).

The Nelson patent fails to teach or suggest at least generating a dummy session. Instead, the Nelson patent only describes "constant bit rate data (e.g., MPEG video)", and fails to teach or suggest generating a dummy session as claimed (Nelson, col. 6, ln. 4-5). The office action suggests that simply because Nelson states "MPEG" that the Nelson patent "*requires* dummy packets" (office action, pg. 3, emphasis added). However, the adding of packets is not and cannot be equated to the generation of "one or more dummy sessions" as claimed. Even if, *arguendo*, dummy packet are generated, at best the adding of dummy packets would be adding packets to an existing session, and would not be the generation of an additional dummy session as claimed. Therefore, the Nelson patent does not teach or suggest each limitation of claim 1.

Instead, the Nelson patent describes a "video-on-demand (VOD) session operating on ITV system 100" referencing FIG. 11 and FIG. 12A-B (Nelson, col. 9, ln. 66 through col. 10, ln. 1,

App. No. 09/881,609  
Response B  
Page 3 of 8

emphasis added). The Nelson patent only describes generating one session in response to one request. Further, the Nelson patent fails to teach or suggest generating a dummy session.

The office action suggests that "MPEG constant-bit rate encoding *requires* dummy packets" (office action, page 3, emphasis added). Even if, arguendo, MPEG does provide for the generation of dummy packets, the addition of "dummy packets" would only be added to an existing session to achieve constant bit rate in that session. MPEG does not teach or suggest generating an additional "dummy session to maintain a predetermined minimum bandwidth" as claimed (claim 1, emphasis added). Therefore, the Nelson patent does not teach or suggest each limitation as recited in claim 1, and thus, claim 1 is not anticipated by the Nelson patent.

Further, the Nelson patent fails to teach or suggest "transmit one or more dummy sessions over the transport stream to maintain a predetermined minimum bandwidth of content over the transport stream" as recited in claim 1 (emphasis added). There is no discussion in Nelson to generate a dummy session to maintain a predetermined minimum bandwidth.

Instead, the Nelson patent specifically teaches away from transmit a dummy session to maintain a predetermined minimum bandwidth of content over the transport stream in that the Nelson patent is specifically "directed toward recovering resources in a distributed system" and would not utilize excess resources by generating a dummy session (Nelson, col. 6, ln. 46-47). The generation of a dummy session would go against the intended purpose of the Nelson patent. Still further, there is no motivation suggested in Nelson to utilize additional resources by generating an additional dummy session as this goes directly against the intended purpose of the Nelson patent. Therefore, the Nelson patent does not teach each limitation as claimed, and thus, claim 1 is not anticipated by the Nelson patent.

Furthermore, even if arguendo that MPEG does provide for the generation of additional packets, MPEG does not teach or suggest generating dummy sessions to maintain a predetermined minimum bandwidth of content over the transport stream. The generation of additional packets would simply be added to an existing session to ensure constant bit rate, and is not generated to "maintain a predetermined minimum bandwidth" (claim 1). Therefore, the Nelson patent in combination with MPEG does not teach or suggest each limitation as recited in claim 1.

Furthermore, the office action repeatedly relies on MPEG as grounds for rejecting the claims without further evidence that MPEG actually teaches the claimed limitation. Instead, the office

App. No. 09/881,609  
Response B  
Page 4 of 8

action simply states, for example, that “MPEG constant-bit rate encoding *requires* dummy packets...” (office action, page 3), without further evidence that MPEG actually teaches the use of dummy packets. Applicant respectfully traverses the office actions reliance on MPEG as a catch all for the claim limitations. Further, MPEG can achieve constant bit rate without the generation of dummy packets as suggested, for example, by iteratively altering the degree of quantization to achieve the output bit-rate desired or adjusting the encoding rate. As such, the fact that Nelson states “MPEG” the Nelson patent does not describe or suggest the generation of additional sessions. Therefore, the Nelson patent does not teach or suggest each limitation as recited in claim 1 and instead the Nelson patent teaches away from the VOD system as recited in claim 1, and thus, claim 1 is not anticipated by the Nelson patent.

Independent claims 10 and 20 recite similar claim language as recited in claim 1, for example, the “transmission of one or more padding sessions” (claim 10, emphasis add) and to “transmit one or more dummy sessions” (claim 20, emphasis added). Therefore, independent claims 10 and 20 are also not anticipated by the Nelson patent.

Claims 2-9, 11-12 and 21-22 depend from independent claims 1, 10 and 20, respectively. Therefore, claims 2-9, 11-12 and 21-22 are also not anticipated by the Nelson patent due at least in part to their dependence on allowable independent claims.

Further with respect to at least claim 2, the Nelson patent does not teach or suggest preventing receivers from decoding the dummy sessions as recited. The office action suggests that MPEG generates dummy packets that “are null-data and not decoded by a receiver” (office action, page 3). The generation of dummy packets, however, is not a dummy session. Further, the Nelson patent does not teach or suggest that a “control server” prevents “each receiver from decoding the dummy sessions” as recited in claim 2. Instead, the office action relies on MPEG suggesting that MPEG generates null-data packets that are not decoded. However, nowhere does the office action demonstrate that Nelson describes a “control server to prevent each receiver from decoding the dummy session” (claim 2, emphasis added). Thus, claim 2 is not anticipated by the Nelson patent.

Claim 3 is also rejected relying on MPEG, however MPEG does not recite the generation of additional dummy sessions, nor does MPEG recite generation of one or more dummy sessions “to ensure that each receiver can synchronize to a subscribed VOD session” as claimed. Therefore, claim 3 is also not anticipated.

App. No. 09/881,609  
Response B  
Page 5 of 8

Claim 4 recites determining “whether the bandwidth of content over the transport stream is below a predetermined threshold, and to cause the video server to transmit one or more dummy sessions, as necessary, to maintain the bandwidth of content at or above the predetermined threshold” (emphasis added). As demonstrated above, the Nelson patent and MPEG fail to teach or suggest generating an additional session to maintain the bandwidth of the content at or above the predetermined threshold. Therefore, claim 4 is also not anticipated by the Nelson patent.

In rejecting claims 5 and 6, the office action takes official notice that settops would include “demodulator, decoder and an MPEG frame synchronizer” and that servers would include “MPEG frame synchronizer, encoder, and modulator” (claims 5 and 6, respectively). Applicant respectfully traverses this official notice in that many different settops 140 and servers 120 could be incorporated into the Nelson patent, and nowhere does the Nelson patent suggest that the settops include at least “demodulator, decoder and an MPEG frame synchronizer”, or that the servers include “MPEG frame synchronizer, encoder, and modulator”. There is no suggestion in Nelson that the settops and servers include the claimed elements, and instead, the Nelson patent describes the “exemplary hardware configuration 200 for both remote servers 120 and settops 140 as shown in FIG. 2” (Nelson, col. 4, ln. 44-47, emphasis added), and fails to teach or suggest demodulator, decoder and an MPEG frame synchronizer as claimed. Thus, Applicant respectfully submits that official notice cannot be taken in that the Nelson patent describes the configuration of both the servers 120 and settops 140 and there is no discussion of demodulator, decoder and an MPEG frame synchronizer, and further there are many different ways in which at least the servers and settops of the Nelson patent can be implemented and official notice cannot be taken. Therefore, at least claims 5 and 6 are not anticipated by the Nelson patent.

Claim 7 recites in part that “the transport stream is transmitted over a radio frequency channel.” Similarly, claim 8 recites in part “video server can transmit one or more VOD sessions over one or more radio frequency (RF) channels”. Still further, claim 11 recites the “transmission of VOD sessions over a plurality of radio frequency channels....” The office action cites Nelson, col. 4, lines 35-43 and col. 9, line 66 through column 10 line 4 in suggesting the Nelson teaches the transmission of a VOD session over radio frequency. However, the Nelson patent only describes that the “[r]emote servers 120 are connected to settops 140 via an asynchronous transfer mode network 130 (ATM network 130)” (col. 4, ln. 39-41, emphasis added). The Nelson patent does not

App. No. 09/881,609  
Response B  
Page 6 of 8

teach at least to transmit a VOD session over a radio frequency channel as recited in claims 7, 8 and 11. The use of ATM does not mean radio frequency transmission. There is not suggestion in Nelson that the VOD sessions are communicated by radio frequency. Therefore, the Nelson patent does not teach each limitation of at least claims 7, 8 and 11, and thus, claims 7, 8 and 11 are not anticipated by the Nelson patent.

Claim 9 recites in part “when control server receives a request for a new VOD session ... terminates one or more of the one or more dummy sessions...” (emphasis added). The office action states that “dummy packets are no longer added to stuff the transport stream” (office action, pg. 5). However, stopping the use of dummy packets is not equivalent to “terminating ... dummy sessions” as recited in claim 9 (emphasis added). The no longer adding of dummy packets is not terminating a session. Therefore, at least claim 9 is not anticipated by the Nelson patent.

Claim 12 includes language similar to that of claim 9. Thus, claim 12 is also not anticipated by the Nelson patent for at least the reasons provided above.

Claim 21 recites language similar to that of claim 4, and thus similar arguments can be presented. Specifically, the Nelson patent nor MPEG describe generating an additional session to maintain the bandwidth of the content at or above the predetermined threshold. Therefore, claim 21 is also not anticipated by the Nelson patent.

2. The office action has also rejected claim 1 under 35 U.S.C. §102(b) being anticipated by U.S. Patent No. 5,822,530 to Brown. Applicant respectfully traverses these rejections. The Brown patent specifically teaches away from the system as recited in claim 1. For example, claim 1 recites in part “the control server ... to cause the video server to transmit one or more dummy sessions over the transport stream to maintain a predetermined minimum bandwidth of content over the transport stream” (emphasis added). The Brown patent instead attempts to determine whether a maximum number of VOD sessions are active and when a maximum number of sessions are active denies an additional VOD session and instead offers a derivative near video on demand (NVOD) session. Therefore, the Brown patent does not teach or suggest at least transmitting a dummy session to maintain a predetermined minimum, and instead teaches away from such operation by attempting to avoid exceeding a maximum, and thus claim 1 is not anticipated by the Brown patent.

App. No. 09/881,609  
Response B  
Page 7 of 8

Further, claim 1 provides that the control server generates "one or more dummy sessions". The Brown patent fails to teach or suggest generating a dummy session for any reason. The claimed control server as recited in claim 1 generates one or more dummy session to maintain a minimum bandwidth. The Brown patent fails to teach or suggest generating a dummy session and instead teaches away from generating dummy sessions in attempts to preserve bandwidth. Still further, the office action states that the generation of dummy sessions is not considered by the Brown patent and ignores this claim limitation. Applicant respectfully submits that claim 1 provides that the control server generates dummy sessions to maintain a minimum bandwidth, and is thus part of the claim. The Brown patent fails to teach this limitation, and thus, claim 1 is not anticipated.

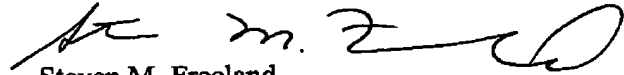
App. No. 09/881,609  
Response B  
Page 8 of 8

**CONCLUSION**

In view of the above, Applicant submits that the pending claims are in condition for allowance. Therefore, a Notice of Allowance is respectfully requested.

Dated: 2-2-06

Respectfully submitted,



Steven M. Freeland  
Reg. No. 42,555  
Attorney for Applicant

**Address all correspondence to:**  
FITCH, EVEN, TABIN & FLANNERY  
Thomas F. Lebens  
120 So. LaSalle Street, Ste. 1600  
Chicago, IL 60603  
(805) 781-2865

440287\_1(71713amB.001)